

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11948-RGS

SEYED MOHSEN HOSSEINE -
SEDEHY,
Plaintiff

v.

ERIN T. WITHINGTON
and THE CITY OF BOSTON
Defendants

**DEFENDANT CITY OF BOSTON'S ANSWER TO PLAINTIFF'S COMPLAINT
WITH AFFIRMATIVE DEFENSES AND JURY DEMAND**

Now comes the Defendant City of Boston and answers the Plaintiff's Complaint as follows:

PARTIES

1. Defendant City of Boston alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph one of the Complaint, and therefore neither admits nor denies said allegations.
2. Defendant City of Boston denies the allegations contained in sentence one of paragraph two of the Plaintiff's Complaint. Answering further, Defendant City of Boston admits the allegations contained in sentence two of paragraph two of the Plaintiff's Complaint.
3. Defendant City of Boston admits paragraph three of the Plaintiff's Complaint.

JURISDICTION

4. Defendant City of Boston states that paragraph four contains the Plaintiff's statement of jurisdiction, and therefore requires no response.
5. Defendant City of Boston states that paragraph five contains the Plaintiff's statement of jurisdiction, and therefore requires no response.

FACTUAL ALLEGATIONS

6. Defendant City of Boston is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph six of the Complaint and therefore neither admits nor denies said allegations.

7. Defendant City of Boston is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph seven of the Complaint and therefore neither admits nor denies said allegations.
8. Defendant City of Boston is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph eight of the Complaint and therefore neither admits nor denies said allegations.
9. Defendant City of Boston is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph nine of the Complaint and therefore neither admits nor denies said allegations.
10. Defendant City of Boston is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ten of the Complaint and therefore neither admits nor denies said allegations.
11. Defendant City of Boston is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph nine of the Complaint and therefore neither admits nor denies said allegations.
12. Defendant City of Boston is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph twelve of the Complaint and therefore neither admits nor denies said allegations.
13. Defendant City of Boston is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph thirteen of the Complaint and therefore neither admits nor denies said allegations.
14. Defendant City of Boston does not answer paragraph fourteen of the Complaint, as it contains a conclusion of law to which no response is required. To the extent that paragraph fourteen alleges any claim against Defendant City of Boston, it is denied.
15. Defendant City of Boston is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph fifteen of the Complaint and therefore neither admits nor denies said allegations.
16. Defendant City of Boston admits that Defendant Withington's request for a criminal complaint against the Plaintiff was granted, and an arrest warrant issued for the Plaintiff. Answering further, Defendant City of Boston is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph sixteen of the Complaint and therefore neither admits nor denies said allegations.
17. Defendant City of Boston admits that on March 22, 2004, Defendant Withington arrested the Plaintiff at 900 Boylston Street, Boston, MA. Answering further, Defendant City of Boston is without knowledge or information sufficient to form a belief as to the truth of

the remaining allegations contained in paragraph seventeen of the Complaint and therefore neither admits nor denies said allegations.

18. Defendant City of Boston is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph eighteen of the Complaint and therefore neither admits nor denies said allegations.
19. Defendant City of Boston does not answer paragraph nineteen of the Complaint, as it contains a conclusion of law to which no response is required. To the extent that paragraph nineteen alleges any claim against Defendant City of Boston, it is denied.

COUNT I

Defendant Withington's Violation Of The Plaintiff's Civil Rights

20. Defendant City of Boston realleges and incorporates its answers to paragraphs one through nineteen of the Plaintiff's Complaint as though fully set forth herein.

Defendant City of Boston does not answer the allegations contained in paragraphs twenty-one through twenty-four of the Complaint as said allegations are not directed against Defendant City of Boston.

COUNT II

Defendant City Of Boston's Violation of The Plaintiff's Civil Rights for Failure to Train Defendant Withington Properly

25. Defendant City of Boston realleges and incorporates its Answers to paragraphs one through twenty-four of the Plaintiff's Complaint as though fully set forth herein.
26. Defendant City of Boston denies the allegations contained in paragraph twenty-six of the Complaint.
27. Defendant City of Boston does not answer paragraph twenty-seven of the Complaint, as it contains a conclusion of law to which no response is required. To the extent that paragraph twenty-seven alleges any claim against Defendant City of Boston, it is denied.
28. Defendant City of Boston does not answer paragraph twenty-eight of the Complaint, as it contains a conclusion of law to which no response is required. To the extent that paragraph twenty-eight alleges any claim against Defendant City of Boston, it is denied.
29. Defendant City of Boston does not answer paragraph twenty-nine of the Complaint, as it contains a conclusion of law to which no response is required. To the extent that paragraph twenty-nine alleges any claim against Defendant City of Boston, it is denied.

COUNT III

*Defendant City of Boston's Violation of the Plaintiff's Civil Rights
for Failure to Supervise Defendant Withington Properly*

30. Defendant City of Boston realleges and incorporates its Answers to paragraphs one through twenty-nine of the Plaintiff's Complaint as though fully set forth herein.
31. Defendant City of Boston denies the allegations contained in paragraph thirty-one of the Complaint.
32. Defendant City of Boston does not answer paragraph thirty-two of the Complaint, as it contains a conclusion of law to which no response is required. To the extent that paragraph thirty-two alleges any claim against Defendant City of Boston, it is denied.
33. Defendant City of Boston does not answer paragraph thirty-three of the Complaint, as it contains a conclusion of law to which no response is required. To the extent that paragraph thirty-three alleges any claim against Defendant City of Boston, it is denied.
34. Defendant City of Boston does not answer paragraph thirty-four of the Complaint, as it contains a conclusion of law to which no response is required. To the extent that paragraph thirty-four alleges any claim against Defendant City of Boston, it is denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Defendant, City of Boston answering states that the injury or damage alleged in Plaintiff's Complaint was neither caused nor proximately caused by the Defendant City of Boston.

Second Affirmative Defense

The Defendant, City of Boston answering says that the Plaintiff's Complaint fails to state a claim upon which relief may be granted.

Third Affirmative Defense

The Defendant, City of Boston answering states that the injuries and damages alleged were caused by a person or entity over whom the Defendant City of Boston has no responsibility or control.

Fourth Affirmative Defense

The Defendant, City of Boston answering states that the injuries and damages alleged were caused by the Plaintiff's own intentional conduct and not the conduct of the Defendant City of Boston.

Fifth Affirmative Defense

The Defendant, City of Boston answering states that the Plaintiff has not been deprived of any rights secured by either the Constitution or the laws of the United States or Commonwealth of Massachusetts.

Sixth Affirmative Defense

The Defendant, City of Boston answering states that the complaint fails to state a claim upon which relief can be granted pursuant to 42 U.S.C. §1983 because it fails to show any factual connection between alleged, unconstitutional custom, policy or practice of the City and the violation of the Plaintiff's constitutional rights.

Seventh Affirmative Defense

The Defendant, City of Boston answering states that at all times relevant hereto, the City of Boston acted in accordance with all relevant laws of the United States and the Commonwealth of Massachusetts.

Eighth Affirmative Defense

The Defendant, City of Boston answering states that the Plaintiff, by his own acts, omissions, conduct and activities is estopped from asserting any claim against the City of Boston.

Ninth Affirmative Defense

The Defendant, City of Boston states that it is a municipality against which punitive damages may not be assessed.

Wherefore, the Defendant City of Boston requests this Court to dismiss this action and whatever such other relief as it deems appropriate.

JURY CLAIM

The Defendant demands a trial by jury on all claims.

Respectfully submitted,

DEFENDANT, CITY OF BOSTON

By its attorney:

/s/ Amy E. Ambarik

Amy E. Ambarik, BBO# 637348

Assistant Corporation Counsel

City of Boston Law Department

Room 615, City Hall

Boston, MA 02201

(617) 635-4099

CERTIFICATE OF SERVICE

I, Amy E. Ambarik, hereby certify that I served Defendant City of Boston's Answer to the Plaintiff's Complaint With Affirmative Defenses and Jury Demand, by mailing a copy, postage prepaid, to the following:

Christopher Duggan, Esq.
Smith & Duggan LLP
Lincoln North
55 Old Bedford Road
Lincoln, MA 01773-1125

10/7/04
Date

/s/ Amy E. Ambarik
Amy E. Ambarik